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successor in interest to RAMS HORN PRODUCTIONS BV
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8 **United States District Court**
9 **Central District of California**
10 **Oakland Division**
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12 KORVEL SUTTON,

13 Plaintiff,

14 v.

15 APPLE COMPUTERS iTunes;
DONALD B. McMILLAN; and JAMES
16 (JIM) CALLON,

17 Defendants.
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Case No. C11-03911 (LB)

**RAMS HORN'S ANSWER TO
PLAINTIFF'S COMPLAINT**

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Defendant Rams Horn BV (“Rams Horn”) answers and responds to Plaintiff Korvel Sutton’s (“Sutton”) Complaint (“Complaint”) as follows:

1. In response to paragraph 1.a of the Complaint, Rams Horn lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1.a, and on that basis denies each and every allegation contained therein.

2. In response to paragraph 1.b of the Complaint, Rams Horn lacks knowledge or information sufficient to form a belief as to the truth of Sutton’s allegations regarding defendant Apple’s name or main place of business. Rams Horn lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 1.b and on that basis denies each and every such allegation.

3. In response to paragraph 3 of the Complaint, Rams Horn denies that it violated any copyright of Sutton, or wrongfully distributed any copyrighted work of Sutton at any time, denies that the consent or permission of Sutton was required to offer “Pretty Boy Gangsters ‘Rollin like a Star’” or any of the other works referenced in the Complaint, and is informed and believes and on that basis denies that the compilations “Elektro Hip Hop Party – vol. 3,” “The Biggest Hip Hop Anthems,” “U.S. Hip Hop Party,” “The Best Of Street Dance,” “I Love Hip Hop,” “2 Live Crew & Posse,” “Dr. Dre presents More Mega Big Gangsta Raps,” or “Toddy Tee And Dr. Dre” were offered by the iTunes Store service in the U.S. at any time. Rams Horn is informed and believes and on that basis admits that “PBG – the Album” by Pretty Boy Gangster, the compilation “West Coast Posse, Vol. 1,” and the compilation “West Coast Posse, Vol. 2” were offered by the iTunes Store service in the U.S at certain times including on or about April 2, 2009. Rams Horn admits that Exhibit 2-A appears to be a copy of a webpage taken at some time in the past from the iTunes Preview service available at itunes.apple.com but denies that this exhibit shows “the actual web page” from which Apple offered any of Sutton’s alleged copyrighted work. Rams Horn is informed and believes and on that basis admits that Exhibit 2-B is a copy of an email that includes an email from an Apple representative to John McCormack dated May 13, 2010 listing 23

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territories in which Apple made available for download (a) “PBG – The Album” by Pretty Boy Gangster, (b) “K the Buster” by Pretty Boy Gangster on the compilation “West Coast Posse, Vol. 1, and © “K the Buster” by Pretty Boy Gangster on the compilation “West Coast Posse, Vol. 2.” Rams Horn admits that Exhibit 2-C appears to be a copy of a page from the U.S. Copyright Office web page referencing a copyright registration for a sound recording entitled “The PBG’s,” also known as “Pretty Boy Gangsters,” listing copyright claimants “Korvel Sutton” and “Roderick Williams,” with a issuance date of November 5, 1990. Rams Horn admits that the records of the U.S. Copyright Office indicate that Sutton and Roderick Williams are the copyright claimants for registration number SRu000196277 entitled “The PBG’s,” also known as “Pretty Boy Gangsters. Rams Horn lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 3 and on that basis denies each and every such allegation.

4. In response to paragraph 4 of the Complaint, Rams Horn denies all allegations therein, denies that Sutton is entitled to any relief, including but not limited to the relief requested in the Complaint, and denies that Sutton has been damaged by any act of Rams Horn in any amount whatsoever.

RAMS HORN’S AFFIRMATIVE DEFENSES

Rams Horn alleges the following as separate and affirmative defenses to the Complaint. The assertion of such defenses does not create any legal or factual burden not otherwise provided by law.

FIRST AFFIRMATIVE DEFENSE

Sutton’s claims are barred, in whole or in part, by the existence of a license or an implied license.

SECOND AFFIRMATIVE DEFENSE

Sutton’s claims are barred, in whole or in part, by Sutton’s and/or Williams’

1 and Macola's sale of the subject copyrights, so Sutton does not have any ownership
2 interest in them.

3 **THIRD AFFIRMATIVE DEFENSE**

4 Sutton's claims are barred, in whole or in part, by the statute of limitations.

5 **FOURTH AFFIRMATIVE DEFENSE**

6 Sutton's claims are barred, in whole or in part, by the doctrine of laches.

7 **FIFTH AFFIRMATIVE DEFENSE**

8 Sutton's claims are barred, in whole or in part, by the lack of infringement
9 within the U.S. of the asserted works.

10 **SIXTH AFFIRMATIVE DEFENSE**

11 Sutton's claims are barred, in whole or in part, by the doctrine of estoppel.

12 **SEVENTH AFFIRMATIVE DEFENSE**

13 Sutton's claims are barred, in whole or in part, by the doctrine of waiver.

14 **EIGHTH AFFIRMATIVE DEFENSE**

15 Sutton's claims are barred, in whole or in part, by the doctrine of unclean
16 hands.

17 **NINTH AFFIRMATIVE DEFENSE**

18 Sutton's claims are barred, in whole or in part, by the doctrine of copyright
19 misuse.

20 **TENTH AFFIRMATIVE DEFENSE**

21 Sutton's claims are barred, in whole or in part, because he does not have the
22 right to sue for infringement of some or all of the asserted copyrights.

23 **ELEVENTH AFFIRMATIVE DEFENSE**

24 Sutton's claims are barred, in whole or in part, because any alleged
25 damages are speculative, uncertain, and not foreseeable.

26 **TWELFTH AFFIRMATIVE DEFENSE**

27 Sutton's claims are barred, in whole or in part, because he has failed to join
28 one or more required and/or indispensable parties.

THIRTEENTH AFFIRMATIVE DEFENSE

Sutton's claims are barred, in whole or in part, because the acts or omissions of third-parties (or any of their agents, authorized or unauthorized) contributed to or caused any damages suffered by Sutton. Such parties are liable for indemnity or contribution to the extent of their fault.

REQUEST

WHEREFORE, Rams Horn requests judgment as follows:

1. That Sutton take nothing by reason of the Complaint;
2. That judgment be entered in favor of Rams Horn and against Sutton;
3. That Sutton's complaint be dismissed;
4. That Rams Horn be awarded reasonable attorneys' fees;
5. That Rams Horn be awarded its costs of suit herein; and
6. That the Court grant such other and further relief as it deems just and proper.

Dated: February 13, 2012

Respectfully submitted,

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By: /pamela koslyn/
PAMELA KOSLYN

Attorneys for Proposed Intervenor
RAMS HORN BV

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